IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 3769 of 1987

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgments?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DILIP K SHAH
VERSUS
UNITED BANK OF INDIA

Appearance:
MR IM PANDYA for Petitioner
MR SN SHELAT for Respondents No.1 and 2

CORAM : MR JUSTICE S.K. KESHOTE
Date of decision: 03-03-97.

C.A.V. JUDGMENT

1. The petitioner, an Officer of the United Bank of India, filed this Special Civil Application before this court and challenge has been made thereunder to the order annexure `G' dated 29th December, 1986, of the Assistant

General Manager (Personnel), disciplinary authority, under which he was ordered to be dismissed from the services on a misconduct which was found proved against him in an inquiry held. The petitioner has also challenged the order, annexure `I' dated 19th June, 1987, of the appellate authority, the respondent no.2 herein, under which the appeal filed by him against the order of dismissal has also been dismissed.

2. The petitioner was served with a charge-sheet, vide memo dated 15th November, 1982 of the disciplinary authority. As many as eight charges were there against the petitioner. He was served with another charge-sheet, vide memo dated 4th July, 1983 of the disciplinary authority under which there were as many as six charges. The charges against the petitioner are of misappropriation of the Bank fund for his own personal gains and purposes. The parties are in agreement that a joint inquiry has been held on both the charge-sheets given to the petitioner. However, the inquiry officer has not given any report on the charges which were there against the petitioner under the second charge-sheet. The Inquiry Officer found that the charges No.1, 2, 5 and 8 of the first charge-sheet proved against the petitioner. The charges No.6 and 7 were found not proved. The disciplinary authority after considering the charges, the finding of the Inquiry Officer and the evidence, both oral and documentary, produced on the record, under its order dated 20th December, 1986, the penalty of dismissal was given to the petitioner. This order was sent to the petitioner and the inquiry report was enclosed thereto. The petitioner filed an appeal against this order with the appellate authority, the respondent No.2 herein, but that appeal came to be dismissed under the order dated 19th June, 1987. Hence, this Special Civil Application before this court.

3. This Special Civil Application came to be heard by the Division Bench of this court along with bunch of other cases. Under the order dated 5th August, 1991 all those Special Civil Applications were allowed partly. There is no dispute that the writ petition of the petitioner was accepted only on the ground that the inquiry report was not supplied to the delinquent officer to make a representation to the disciplinary authority against the same. That decision of this court was challenged by the respondent-Bank before the Hon'ble Supreme Court of India and the Division Bench order of this court has been set aside. The matter was remitted to this court with the direction to restore this Special Civil Application and to dispose of the same after considering the other contentions raised by the

petitioner, herein, in this Special Civil Application.

4. The learned counsel for the petitioner firstly contended that the order of penalty vitiates only on the ground that the assistance of a lawyer as well as personal hearing was not afforded to the petitioner by the appellate authority in the appeal. In support of this contention, the counsel for the petitioner placed reliance on the decision of this court in the case of Smt. M.J. Mehta vs. Valsad-Dang Gramin Bank reported in 1996(2) GLR 517, and the decision of the Hon'ble Supreme Court in the case of J.K Aggarwal vs. Haryana Seeds Development Corporation Ltd. reported in AIR 1991 SC 1221. It has next been contended that copy of preliminary inquiry report conducted by the Officer, Special Department in Vigilance Cell, has not been furnished to the petitioner, and as such, the principles of natural justice has been violated. In support of this contention, the counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Punjab vs. Bhagat Ram reported in AIR 1974 SC 2335, in the case of Kashinath Dikshita vs. Union of India reported in AIR 1986 SC 2118, in the case of State of T.N. vs. K.V. Perumal reported in AIR 1996 SC 2474, and in the case of State Bank of India vs. D.C. Aggarwal reported in 1993(1) SCC 13. It has next been contended that no financial loss has been caused to the Bank by the alleged misconduct of the petitioner, and as such, the penalty of dismissal was not justified. It has further been contended that the inquiry officer was a biased person, and as such, whole of the inquiry vitiates. Lastly, the counsel for the petitioner contended that the disciplinary authority has taken into consideration for giving the penalty of dismissal to the petitioner, other papers which were not the part of the inquiry record.

5. The learned counsel for the Bank, on the other hand, supported the orders made by both the disciplinary authority and the appellate authority.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is not in dispute that the domestic inquiry as well as disciplinary proceedings against the officer of the bank are regulated under the provisions of the United Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as Regulations). The Regulations were framed in exercise of power conferred by sec.19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, in consultation with the Reserve Bank of India and with the

previous sanction of the Central Government. Regulation 17 of the Regulations makes a provision for the appeals. An officer employee may appeal against any order imposing upon him any of the penalties specified in Regulation 4 and against the order of suspension referred to in Regulation 12. An appeal shall lie to the appellate authority specified in the first and second schedules of the Regulations. The learned counsel for the petitioner is unable to cite any provision from the Regulations whereunder the assistance of lawyer as well as personal hearing in the appeal was to be given to the appellant. Regulation 17, regulates the procedure of hearing of the appeal before the appellate authority, but it nowhere provides that the appellant shall be given any opportunity of personal hearing. When the provisions nowhere contemplates for giving of an opportunity of personal hearing to the appellant, how far the petitioner can be justified to claim the assistance of a lawyer in the appeal before the appellate authority. Regulation 17 provides that the appellate authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The appellate authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. However, in case where the appellate authority proposes to enhance the penalty which is a major penalty, and an inquiry as provided in Regulation 6 has not already been held in the case, the appellate authority shall direct that such an enquiry be held, and thereafter consider the record of the inquiry and pass such orders as it may deem proper. In the case where the inquiry has already been held under the regulations, and the appellate authority decides to enhance the punishment then it shall give a show-cause notice to the officer employee as to why enhance penalty should not be imposed upon him and shall pass final order after taking into consideration the representation, if any, submitted by the officer employee.

7. So only where the appellate authority proposes to enhance the punishment, a show-cause notice is required to be given, but then also under Regulation 17 of the Regulations there is no provision that the appellant should be given an opportunity of personal hearing. Only representation has to be filed and it is to be taken into consideration while passing the final order.

8. The petitioner was provided with the assistance of the defence representative in the inquiry. In the

inquiry the petitioner has not prayed for providing him any assistance of the lawyer. This prayer has been made by the petitioner only at the stage of appeal. In the absence of any provision in the Regulations to provide the assistance of lawyer to the delinquent office employee as well as to afford him an opportunity of personal hearing, the first contention of the counsel for the petitioner cannot be accepted.

9. In the case of Smt. M.J. Mehta vs. Valsad-Dang Gramin Bank (supra) the point in issue was altogether different and that decision is of little help to the petitioner in the facts of the present case. That was a case where the petitioner therein was facing grave charges and in that facts the Court has considered whether the delinquent employee should be permitted to engage a lawyer or not. The Court making reference to the Regional Rural Bank Act, 1976 and regulations framed under Valsad-Dang Gramin Bank (Staff) Service Regulation, 1994 observed that those regulations do not lay down an absolute prohibition in respect of providing assistance of a lawyer to a delinquent employee. The court held that the authority has to apply its mind on the facts of the case. In the case in hand, the petitioner has not claimed any assistance of a lawyer during the inquiry, but this prayer, as stated earlier, has been made by him in the appeal. So the petitioner has not considered the charges against him to be grave and complicated which warrants any necessity of his defence to be made by a lawyer.

10. In the case of J.K. Aggarwal vs. Haryana Seeds Development Corporation Ltd. (supra) referring to the Haryana Civil Services Appeal Rules, 1952, the Hon'ble Supreme Court observed that where the charges are so serious as to entail a dismissal from service, the inquiry authority may permit the services of a lawyer to the delinquent employee. This rule vests a discretion. The court has further observed that in the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reason of the employee being pitted against a Presenting Officer who is trained in law. Where the Presenting Officer was a person with legal attainments and experience and the employee had no legal background the refusal of the service of a lawyer to the delinquent resulted in denial of natural justice. As stated earlier, the facts of the present case are altogether different. In the present case, the petitioner has not prayed for any service of a lawyer in inquiry. In the case before the Hon'ble Supreme the question was

whether the Presenting Officer was person with legal attainment and experience and the employee had no legal background then the refusal of service of lawyer to him held to be resulted in denial of natural justice. In the inquiry, the petitioner has not claimed any such assistance, but he has prayed for this assistance in the appeal. In the appeal, the appellate authority has to decide the mater without hearing any of the parties, and as such, the denial of assistance of a lawyer in the appeal cannot be said to be illegal or arbitrary or causing any miscarriage of justice or resulted in denial of defence.

11. Reference may be made to the decision of the Hon'ble Supreme Court in the case of State Bank of Patiala vs. Mahendra Kumar Singhal reported in 1994 (Supp) (2) SCC 463, it has been held that, in the absence of any rule to the contrary, affording an opportunity of personal hearing in the departmental appeal is not necessary. It is advantageous to refer to the observations made by the Hon'ble Supreme Court in this case in para no.3 of the judgment. Para no.3 of the judgment reads as under:

> No rule has been brought to our attention which requires the appellate authority to grant a personal hearing. The rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. That is what this Court observed in F.N. Roy vs. Collector of Customs, Calcutta. We, therefore, think that the impugned order is not valid. Our attention was, however, drawn to the decision in Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi wherein observation is made in regard to the right of hearing. But that was not a case of a departmental inquiry, it was one emanating from Article 324 of the Constitution. In our view, therefore, those observations are not pertinent to facts of this case.

> Re : Second contention of the petitioner that the copy of preliminary inquiry report is not furnished to the petitioner.

12. So far as this grievance of the petitioner is concerned, it is also devoid of any substance. Before proceeding to decide the matter on merits on this contention, I consider it to be appropriate to first deal

with the case laws cited by the counsel for the petitioner.

13. In the case of State of Punjab vs. Bhagatram (supra), the Hon'ble Supreme Court held that the denial to the Government servant, copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against him is unjust and unfair. This case is clearly distinguishable as it is not the case of the petitioner that the statement of the witnesses examined during investigation were produced in the inquiry in support of the charges levelled against the petitioner.

14. In the case of Kashinath Dikshita vs. Union of India, (supra), the Hon'ble Supreme Court has held that the refusal to the delinquent employee, the copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry and copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the employee and even in this connection the reasonable request of the employee to have the relevant portions of the documents extracted with the help of his stenographer was refused and he was told to himself make such notes as he could, and the Government failed to show that no prejudice was occasioned to the employee on account of non-supply of copies of the documents, the order of dismissal was held to be illegal. In the case in hand, it is not the case of the petitioner that the statement of witnesses recorded in the preliminary inquiry has been used against him in the inquiry. The petitioner has not made any request for supply of this document. But what he prayed was for production of the preliminary inquiry report of the investigation officer while he was being examined at the inquiry. The petitioner has failed to point out how otherwise this inquiry report was necessary for his defence. The aforesaid case of the Hon'ble Supreme Court is of little help to the petitioner in this case.

15. In the case of State of T.N. vs. K.V. Perumal (supra), the Hon'ble Supreme Court has observed:

> After hearing the counsel for the parties we find that grounds 1,2 and 4 are unsustainable in law and on facts of the case. We need not deal with grounds 1 and 2 inasmuch as Shri Venkatramani, learned counsel for the respondent, did not seek to support to the said grounds. Be that as it may, we have perused the

memo of charges and we do not find any vagueness in the charges. Similarly the second ground given by the Tribunal appears to be based upon a mistake as to the identity of the person appointed as the enquiry officer. So far as the fourth ground is concerned, it has been repeatedly held by this Court that it is not the province of the Tribunal to go into the truth or otherwise of the charges and that the Tribunal is not an appellate authority over the departmental authorities. Accordingly, the Tribunal must be held to have exceeded its jurisdiction in entering upon a discussion whether the charges are established on the material available. The fourth ground also thus disappears. Now remains only the third ground viz., the non-furnishing of the documents asked for by the respondent. The Tribunal seems to be under the impression that the enquiry officer/disciplinary authority is bound to supply each and every document that may be asked for by the delinquent Officer/employee. It is wrong there. Their duty is only to supply relevant documents and not each and every document asked for by the delinquent officer/employee. In this case the respondent had asked for certain documents. The Registrar, to whom the request was made, called upon him to specify the relevance of each and every document asked for by him. It is not brought to our notice that the respondent did so. The Tribunal too has not gone into the question nor has it expressed any opinion whether the documents asked for were indeed relevant and whether their non-supply has prejudiced the respondent's case. The test to be applied in this behalf has been set out by this Court in State Bank of Patiala vs. S.K. Sharma, 1996 (3) Scale 202 : (1996 AIR SCW 1740). It was the duty of the respondent to point out how each and every document was relevant to the charges or to the enquiry being held against him and whether and how their non-supply has prejudiced his case. Equally, it is the duty of the Tribunal to record a finding whether any relevant documents were not supplied and whether such non-supply has prejudiced the defendant's case. Since this has not been done by the Tribunal in this matter, it has to go back for a rehearing.

16. That case is also of no help to the petitioner in the present case, as it has been decided on the facts of that case, and as stated earlier, here the preliminary inquiry report was sought to be produced by the petitioner at the stage of the examination of the witness, and the petitioner has failed to establish as to how this report is relevant and non-supply of the same has caused any prejudice to him.

17. In the case of State Bank of India vs. D.C. Aggarwal, the question for consideration before the Hon'ble Supreme Court was whether the disciplinary authority, while imposing punishment, major or minor, can act on material which is neither supplied nor shown to the delinquent, and that is not the case here. The preliminary inquiry report was not relied upon by the disciplinary authority while imposing punishment.

18. The petitioner has not prayed for giving him the preliminary inquiry report at any stage earlier to 24th January, 1986. On 24th January, 1986, when Mr. Ghosh, Officer/ Special Department in Vigilance Cell had appeared in the witness box, then the petitioner called upon him to produce the report of his inquiry. The aforesaid officer has replied that he is not authorised to produce the same at the inquiry. On this, the defence representative of the petitioner made a submission to the Inquiry Officer that a copy of the said report is necessarily to be supplied. The Presenting Officer of the management justified the non-supply of the copy of the preliminary inquiry report on the ground that it is not material for the purpose of the inquiry. The learned counsel for the petitioner has placed much emphasis on the finding of the Inquiry Officer on this issue that, "it is not possible at this stage". "Moreover, the case is pending since long which should be completed by this time, the defence counsel is requested to continue the cross-examination of the said witness", but it is of little help to the petitioner. It is not the right of the petitioner to claim each and every document from the witness as well as from the disciplinary authority. The petitioner, a delinquent officer employee can legitimately claim only those documents which have a relevance and bearing on the charge-sheet and relevant in defence of the officer employee. The petitioner has to establish the relevancy of the document in the inquiry on the charges and/or for his defence. The learned counsel for the petitioner after making the submissions at length is unable to satisfy this court for what this preliminary inquiry report is required to be produced and secondly how it is relevant to the charges as well as defence of the petitioner. Only

explanation given by the counsel for the petitioner is that the aforesaid report was required for the cross-examination of the witness i.e. the said Officer. After going through the statements of the Officer, which has been reproduced in para no.8 of the Special Civil Application, the only question which has been put by the petitioner to him is, "You must have submitted a report of your investigation on the basis of which charge-sheet was issued to him with some allegations against him. Will you kindly produce the report of this inquiry ?". How far this question put has any relevancy to the charges as well as the defence of the petitioner. Moreover, it is not the case of the petitioner that the preliminary inquiry/investigation report has been relied in the inquiry against him as well as the Inquiry Officer has given any finding on the charge relying on this inquiry report, and the disciplinary authority has also relied on this inquiry report. The matter would have been different where the report would have been relied upon by the Inquiry Officer, holding the petitioner guilty of the charges. In the absence of any reliance placed on this report in the inquiry or by the disciplinary authority, I fail to see any justification in the claim of the petitioner to supply a copy of preliminary inquiry/investigation report to him. The petitioner has not considered it to be a relevant or material document in the inquiry otherwise he should have demanded the copy of the same at the earliest stage i.e. when the charge-sheet was given to him. A copy of the aforesaid report was in fact not demanded, but during the course of cross-examination of one of the witnesses of the management, the petitioner called upon him to produce the report. The petitioner has no right to get the report produced through any witness of the management unless he is able to show and establish that is has a bearing on the charge-sheet as well as relevant for the defence. It is a settled law that mere denial of the document to the delinquent officer employee will not vitiate the inquiry. The delinquent officer employee has to show in addition to the relevancy of the document that non-production of the same has caused prejudice to him. The petitioner has not given out in the Special Civil Application how any prejudice has been caused to him in the defence for non-supply of this report. What the petitioner has stated in the Special Civil Application is that the preliminary inquiry report was required to cross-examine the staff member of the vigilance cell who had prepared the report of the preliminary inquiry and the denial of the same has resulted in gross denial of effective opportunity to defend. This is hardly any ground to make out the case of causing any prejudice. The petitioner can only pray for

the document which is relevant to the inquiry for the purpose of cross-examining the witness. How this report was relevant, the petitioner is unable to make out a case. The preliminary inquiry report was only a document to prima-facie find out whether the petitioner committed any misconduct. After receipt of this report, the disciplinary authority decides whether it is a case where inquiry should be held or not. The petitioner has admittedly been given the charge-sheet in which the detailed charges have been framed and matter relevant for that charges and defence thereof has been provided to him.

Re : No Financial Loss to the Bank.

19. From the inquiry report, I do not find anything that the Inquiry Officer has reported that there was no financial loss to the bank. Contrary to it, at page No.79 and 81 of the inquiry report, the Inquiry Officer has reported:

> Sri D.K. Shah, being Accountant of a Branch of the Bank, knowing banking and deliberately inflated the credit balance in his Joint Account and also authenticated himself the same and thereafter had withdrawn the amount and misappropriated the said sum of Rs.10,000/for his personal gain and purpose. I do not ..... his above defence and such defence is not tenable. I, therefore, find that the charges No.1 and 2 have been proved.
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> I further find that S.B.A/c. No.1227 of Sri D.K. Shah jointly with Sri S.R. Parmar was not credited with Rs.10,000/- notwithstanding exhibits M-10, M-11 and M-13 to neutralise the earlier fictitious credit entries given in the said account on 13-11-81 and 1-12-1981 for Rs.5000/- each. It was done with the idea to keep the ledger balance tallied. The exhibit shows that the account of M/s. B.B. Acharya has been showing debit balance of Rs.9499/- and the amount has not been repaid by the party till date. As such, the bank may also suffer financial loss. Sri D.K. Shah could not submit any documentary evidence to counter the bank's charge. Sri Shah only stated that M/s. B.B. Acharya had given a letter that they would liquidate the bank's dues.

From this finding of the Inquiry Officer, it is clear that the bank has suffered financial loss. It is a matter of

fact that total loss of Rs.10,000/- has been suffered by the bank, and that amount is stated to be recovered by the petitioner from his dues payable to him, which facts are clearly borne out from Special Civil Application No.5431/94, which is listed for hearing and decided today. So this point raised by the petitioner is of no merits.

Re : Inquiry Officer was biased person.

20. In Para no.6 of the Special Civil Application, the petitioner has stated that the Inquiry officer was a President of the Officer wing of UBIEA, which is a rival union. The petitioner was General Secretary of the rival Union. The rival union got the petitioner transferred from Ahmedabad to Bhubaneshwar and on the strong protest of the union of the petitioner, he was recalled back to Ahmedabad within a period of three months. So the petitioner was an eyesore with the rival union and the top most management of the respondent-Bank because he was espousing the cause of employees through out these years. The majority of the rival union diminished with the passage of time and the petitioner's union gained majority in the officers' cadre. In this factual matrix, the counsel for the petitioner contended that the Inquiry Officer was a biased person.

21. The Bank in reply to the averments made by the petitioner in the Special Civil Application denied that the Inquiry Officer was the President of the rival union. Reference in this respect may be made to para No.8 of the reply filed by the bank to the Special Civil Application wherein on oath it has been denied that the Inquiry Officer, Shri D. Bardhan was the President of the Officers' wing of the rival Union as alleged. The petitioner has not filed any rejoinder to the reply, and as such, the averments made by the respondent-bank in the reply stands uncontroverted. Not only this, the petitioner has not produced any other evidence on record to show and establish that Shri D. Bardhan was the president of the rival union. Otherwise also, on merits, I do not find any substance in this contention. Merely, on the basis of these allegations, it is difficult to accept that the Inquiry Officer was a biased person. The petitioner admittedly has not raised any objection against the Inquiry Officer at any stage till the inquiry was completed and the order of punishment has been made against him. This grievance has been made by the petitioner admittedly only when he has been punished with the penalty of dismissal, in the appeal. The very fact that the petitioner has not raised any objection during the inquiry against the Inquiry Officer conclusively

proves that he was not taken to be the biased person by the petitioner. Only when the inquiry report was given against him and on the basis of which he has been punished with the penalty of dismissal, he has manufactured or concocted this ground. If it would have been a real case of the Inquiry Officer being a biased person, then at the first available opportunity this objection should have been raised by the petitioner. This contention of the petitioner, therefore, deserves no acceptance.

22. The last point raised by the learned counsel for the petitioner is also of no merits. The counsel for the petitioner reading some lines from here and there has raised this contention, but the position which emerges from the record, is that the petitioner has not raised this point in the appeal. Not only this, but even in the Special Civil Application, the petitioner has not raised this contention. This contention has been made by the counsel during the course of arguments. The counsel for the petitioner was called upon by the Court to point out whether this point has been taken by the petitioner in the appeal, but despite of reading the appeal memo two to three times, he was unable to point out that such a point has been taken. I have gone through the contents of the appeal memo, but I do not find that this ground has been taken in the appeal. Not only this, in the Special Civil Application also, the petitioner has not raised this contention. It is a new point which has been raised by the petitioner during the course of arguments and which cannot be permitted to be raised by him.

23. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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zgs/-